

NATIONAL
INDIAN
GAMING
COMMISSION

MAR 20 1995

James H. Joseph, P.C.
6030 Bunker Hill
Pittsburgh, Pennsylvania 15206-1156

Dear Mr. Joseph:

This responds to your letter of December 12, 1994, on behalf of Mr. Michael Horan, requesting that the National Indian Gaming Commission (NIGC) modify an advisory opinion issued by the former Chairman of the NIGC, Anthony J. Hope, on August 3, 1994.

I have conducted a complete review of Shooter Bingo and the August 3, 1994, advisory opinion letter and decline to "republish" the advisory opinion as you have suggested. However, I also do not agree entirely with the analysis of the August 3 opinion. For all the following reasons, it is my opinion that Shooter Bingo is not a game similar to bingo within the meaning of the IGRA and the regulations of the NIGC if played with dice thrown by a player.

In that opinion, Chairman Hope concluded that a game invented by Mr. Horan called "Shooter Bingo" qualified as a class II game under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA) and the regulations of the NIGC. The August 3, 1994, advisory opinion letter required two modifications to Shooter Bingo. One, no player should handle or throw the dice, and two, the dice should be caged. You assert that these modifications exceed the authority of the NIGC and are misconceived. You have requested that the NIGC "republish" the advisory opinion eliminating the two required modifications.

The earlier opinion concluded that Shooter Bingo meets the three statutory requirements for bingo, but then required the two modifications discussed above. It is my opinion that if Shooter Bingo is played with a player throwing dice to determine the winning pattern then it is not a game similar to bingo. The statutory definition of bingo refers to objects being "drawn or electronically determined." The dice used in Shooter Bingo are neither drawn nor electronically determined; they are thrown. Moreover, they are thrown by one of the players. Congress well understood that in the game of bingo, bingo numbers are either manually drawn or they are electronically determined by the use of a bingo blower. Thus, section 2703(7)(A)(i)(II) provides that "the holder of the card covers such numbers or other designations

when objects, similarly numbered or designated, are drawn or electronically determined." (Emphasis added). Games similar to bingo should also adhere to this requirement. Throwing dice to determine the winning pattern does not comport with the statutory definition of bingo.

I also do not believe that allowing players to participate in determining the winning pattern comports with the definition of bingo. The role of the players in the game of bingo is to "cover such numbers or other designations when objects, similarly numbered or designated, are drawn or electronically determined." It is not the role of the player to participate in determining the winning pattern on a card. That function is performed by the gaming operation.¹

Sincerely,


Harold A. Monteau
Chairman

¹ A bingo caller is included within the definition of a "key employee." See, 25 C.F.R. § 502.14. Under the IGRA, a key employee must undergo a background investigation and be issued a license by an Indian tribe. 25 U.S.C. § 2710(b)(2)(F).